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Ethical Judgments: Re-writing Medical law

“Ethical Judgments Re-writing Medical law” aims to re-analyse judicial decision-making in the field of medical law from an ethical perspective. In this sense, it is a fascinating attempt to open reflection on the ethical challenges of medical law judgements.

The book is divided into nine sections, each analysing a specific medical law judgement. It focuses on some of the most crucial medical case law relating to beginning of life and end of life matters:

- Re A (Conjoined Twins: Surgical Separation) [2001] focusing on the separation of conjoined twins when this might cause the death of one of them;
- R (on the application of Axon) v Secretary of State for Health [2006] focusing on the consent of under -16 year olds to abortion and parental rights;
- Airedale NHS Trust v Bland [1993] focusing on withdrawal of life-sustaining treatment in PVS patient;
- R v Human Fertilisation and Embryology Authority *ex parte* Blood [1999] focusing on the post-mortem use of donated sperm;
- Bolitho v Hackney Health Authority [1998] focusing on weight given to medical expertise in medical negligence cases;
- R v Bourne [1939] focusing on whether or when a doctor can terminate a pregnancy;
- Chester v Afshar [2005] focusing on informed consent and information provision;
- R (on the application of Nicklinson and Another) v Ministry of Justice [2014] focusing on assisted suicide and challenges to its illegality in the UK;
- St George's Healthcare NHS Trust v S [1999], focusing on the need to find a balance between a pregnant woman's refusal of Caesarian -section and the potential risks on the foetal and woman's life.

Each section analysing a relevant case is structured around four subsections. The first two subsections consider the judgment in itself. A variety of contributors were called to write, or rather “re-write”, the judgments focusing on a broader ethical analysis rather than on a merely legal one. This meant their task was not to discuss a “mere application of legal rules”, but also to reflect on possible ethical challenges related to the facts of the case (i.e. autonomy, best interest etc.). Subsections number three and four adopt a more atomistic approach. In those sections the contributors were asked either to focus on a purely legal perspective or on a purely ethical one. The overall structure was designed as a “two-stage approach” (Smith, Coggon, et al., 2017, pg.5). The aim was to contrast a counter-factual history- namely to ask what would have happened if the judge had taken into account an ethical approach.

Prima facie, the stylistic approach adopted in subsections three and four might be subject to criticism. A reader might perceive as quite difficult, if not impossible, to mark a clear

line between what is a “purely legal” commentary (subsection three) and what is a “purely ethical” commentary (subsection four).

However, the atomistic approach adopted in these sub-sections (i.e. three and four) might instead be framed as a tool to challenge readers and lead them to the point of realizing that it is impossible to separate ethical and legal considerations when dealing with medical law. What might appear at the outset as repetition, is in itself evidence of the major aim of this book - namely making medical law and medical ethics dialogue with each other.

Furthermore, the major strength of the book is its engaging nature. The questions addressed on the interaction between medical law, ethics and judicial power are particularly fascinating for medical lawyers, ethicists and yet also lay people enabling a wide spectrum of readers to benefit from reading this book. It will provide some useful insights for both bioethicists and medical lawyers, while contributing to build a critical approach in a lay audience.

More fundamentally the book is a unique piece of work within the academic literature. Such a contribution is the result of a series of factors - the wideness of the questions addresses, the singularity of the approach and the high-quality of the contributions. All these characteristics place this book within a relatively under-explored interdisciplinary path for medical law and bioethics.

The book has a particularly fascinating and engaging quality. It tackles questions that both lawyers and bioethicists have often times asked themselves. It focuses on the need for a more interdisciplinary approach in medical law. Despite these fascinating elements of the attempt, more however might have been done to strengthen the book on both a stylistic and substance level. A better structuring of the case-analysis would have made it easier for the reader to follow the arguments being made and would have also strengthened the interdisciplinary approach.

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